



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
75 Hawthorne Street  
San Francisco, CA 94105

May 23, 2011

Thomas Donnelly  
Jones Day  
555 California Street  
26<sup>th</sup> Floor  
San Francisco, CA 94104

Re: Dominguez Channel Mystery Spill – ACTA Request for Rescission

Dear Mr. Donnelly:

EPA received your letter dated May 10, 2011, requesting that EPA rescind the Order for Removal, Mitigation or Prevention of Substantial Threat of Oil Discharge (EPA Dkt. OPA CWA 311-09-2011-0001, the "Order"), which EPA issued to your client, the Alameda Corridor Transportation Authority ("ACTA"), among other respondents. Your letter suggests that EPA rescind the Order because a similar order is issued to another entity, Crimson Pipeline Management Company ("Crimson"), and because you assert that ACTA is not a proper "responsible party" to receive the Order because it does not "own or operate" an "onshore facility" that discharged oil. Because EPA maintains that it appropriately issued the Order for response actions in accordance with Section 311(c)(1)(B)(ii) of the Clean Water Act ("CWA"), 33 U.S.C. § 1321(c)(1)(B)(ii), which authorizes EPA to "direct or monitor all Federal, State, and private actions to remove a discharge" of oil into waters of the United States, EPA believes that there is no basis to rescind the Order.

Your letter argues that ACTA is not a "responsible party" as defined at Section 311(c)(6) of the CWA. EPA need not determine whether a party receiving direction by the Order is a "responsible party" for the purpose of confirming that it issued the Order to direct response actions within its authority under Section 311(c)(1)(B)(ii) of the CWA. As we have discussed, EPA may use the authority of Section 311(c)(1) of the CWA to direct all response actions without regard to a respondent's ultimate liability.

EPA understands that Crimson's effort to comply with its order essentially subsumes the activities required of ACTA in the Order. When Crimson's effort progresses to the completion of the response action, EPA anticipates providing a notice of termination to all parties involved in the response action, including ACTA. Such a notice of termination of the response action will establish the end of response activities under the Order and effectively terminate the Order. In

the meantime, other than ACTA's continued cooperation and provision of access as necessary for the response action to advance, EPA does not anticipate significant affirmative activities toward the response. EPA will notify ACTA if EPA's anticipation in this regard changes.

If you have questions about this letter or the response action in general, as always, please do not hesitate to call me at (415) 972-3904.

Regards,

J. Andrew Helmlinger

cc: Jason Musante, SFD-9